United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

76-1070

To be argued by
BART M. SCHWARTZ

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1070

UNITED STATES OF AMERICA,

Appellee,

—v.—

WILLIAM E. DOULIN,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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Preliminary Statement

William E. Doulin appeals from a judgment of conviction entered on January 23, 1976, in the United States District Court for the Southern District of New York, after a one and one-half week trial before the Honorable Robert J. Ward, United States District Judge, and a jury.

Indictment 75 Cr. 630, filed on June 26, 1975, charged the defendant with eight counts of making false statements before grand juries in violation of Title 18, United States Code, Section 1623. Counts One through Three of the indictment charged Doulin with having made false statements on June 25, 1975, before the August 22, 1973 (Strike Force) Special Grand Jury and Counts Four through Eight charged Doulin with having made false statements on February 12, 1975, before the January, 1975 (Corruption) Additional Grand Jury.

The trial commenced on November 6, 1975, and ended on November 15, 1975, when the jury found the defendant guilty on four of the seven counts submitted to it.*

On January 23, 1976, Judge Ward sentenced Doulin to concurrent terms of two and one half years imprisonment on each count, with execution of the sentence suspended as to all but the first six months of the sentence, to be followed by two years probation.

Doulin is released on bail pending appeal.

Statement of Facts

The Government's Case

A. Introduction

The Government's proof at the trial and at the materiality hearing established that Doulin was called to testify before federal grand juries which were investigating allegations of corruption among public officials in Orange County, and, in particular, allegations that Doulin had received $600-$700 per week in payoffs to protect gambling operations.

During the course of his grand jury testimony, Doulin, *inter alia*, flatly denied any knowledge of or involvement in fixing or interfering with local law enforcement in Orange County in any way and, in particular, with

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* The trial court dismissed the original Count Four prior to trial. Thereafter, the indictment was retyped and renumbered thus leaving seven counts, one through seven, for the jury. Using the numbers of the retyped indictment, the jury convicted on Counts Two, Five, Six and Seven.

respect to gambling cases and a brutal assault case involving a defendant named Richard Monell.

The evidence at trial established that for the sum of approximately $1,500 Doulin did in fact interfere with the prosecution of Richard Monell in the Orange County Criminal Court by causing the then Assistant District Attorney — and later District Attorney — Abraham J. Weissman to recommend a sentence of probation for Monell, despite the fact that this recommendation (1) was not approved by the District Attorney's Office, (2) was against the recommendation of the Orange County Probation Department and (3) was made only as a result of the actions of Doulin, rather than based upon the merits of the case. The combination of Doulin's crucial power as "party leader" and Weissman's desire to become a judge enabled Doulin to successfully manipulate the sentencing procedure. Upon Weissman's recommendation in Court, the Orange County Judge reversed his earlier position that Monell should be imprisoned and sentenced Monell to probation.

B. The Trial

In April, 1968, outside a bar in Newburgh, New York, Richard Monell, without provocation, cold bloodedly shot and almost killed a man against whom he had a grudge (GX 1, 1C).* Immediately after the shooting Monell and his girlfriend, Florence York Hall, who had been in the bar during the shooting, left the scene in Hall's car (Tr. 290, 349-351). Monell drove to Hall's sister's home where Monell switched cars and then drove to Monell's parents' trailer in High Falls, New York (Tr. 351-352).

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* "GX" refers to Government Exhibits; "CX" to Court Exhibits; "Tr." to the trial and hearing transcripts; and "App." to the Defendant's Appendix.

The next day, on advice of counsel, Monell surrendered himself to the Orange County authorities (T. 291). Monell was released on bail, and on September 3, 1968, the Orange County Grand Jury returned a three-count indictment charging him with one count of first degree assault and two counts of second degree assault (Tr. 292; GX 1d).

Angelo Ingrassia, who was Orange County District Attorney during the period of time from the filing of the Monell indictment up until one month before Monell was first sentenced, conducted plea negotiations with Monell's attorneys and reviewed the Monell file (Tr. 37, 50). Ingrassia authorized the Assistant District Attorneys in his office to accept a guilty plea to attempted assault in the second degree, a felony (Tr. 50-52). It was, according to Ingrassia, the standard practice in the District Attorney's Office during his tenure not to make sentencing recommendations or promises to recommend leniency. In the rare case where such a promise was made, it was the further practice to enter on the flap of the District Attorney's file folder the precise terms of the promise (Tr. 52-52). During the time that Ingrassia was District Attorney, he never authorized any sentencing recommendation in the Monell case, nor to his knowledge did any Assistant in his office commit the District Attorney's Office to a recommendation (Tr. 54). Indeed, the Monell file folder (GX 1) did not reflect any promise by the District Attorney's Office to make a leniency recommendation or any other recommendation (Tr. 53, 739).

On December 14, 1970, Monell, now represented by Norman Shapiro, Chief Attorney of the Orange County Legal Aid Society, entered a plea of guilty to attempted assault in the second degree before Judge O'Gorman (Tr. 293). Prior to entering the plea, Monell had a conversation with his grandmother, Mrs. Jean Grant, a long time and devoted friend of Doulin. Mrs. Grant told

Richard Monell that he should enter a plea of guilty to assault in the second degree and that he would be sentenced to a term of five years probation (Tr. 306-308).

Also before changing his plea to guilty, Monell met with his attorney Norman Shapiro who tried to explain to Monell the maximum jail sentence he faced on the proferred plea. Monell told Shapiro that there was nothing to worry about and that he knew what he was doing (Tr. 737).*

On March 5, 1971, Monell appeared in Orange County Court with his attorney, Norman Shapiro, for sentencing before Judge Abraham Isseks. Also present in the courtroom was Florence Hall. The District Attorney's Office was represented by then Acting District Attorney Jerome Cohen, who had succeeded Angelo Ingrassia upon his elevation to the bench (Tr. 146, 309-310, 368, 741;

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* At about this time, Monell was also having difficulties meeting support payments ordered by the Orange County Family Court in connection with Monell's earlier divorce. Finally, on December 14th, the same day that he pleaded guilty to the assault, Monell was arrested by the Family Court and remanded to serve a period of six months. Later that month, Mrs. Grant told Florence Hall that she would arrange to get Richard home for Christmas by contacting her old friend "Bill." While Monell was in jail, Florence Hall and Mrs. Grant went to the Orange County Jail complex where Hall visited Monell while Mrs. Grant remained outside. When the visit was over, Hall rejoined Mrs. Grant who was talking to William Doulin. Upon being introduced to Florence Hall, Doulin commented that she must be "the girlfriend of the bad boy." Mrs. Grant and Florence Hall returned to Mrs. Grant's home in High Falls and shortly thereafter, prior to the Christmas holiday, Monell was released from Family Court Jail. Upon Monell's arrival home, Mrs. Grant remarked that she had said she could get him out before Christmas and that she had done it (Tr. 294-296, 355-364).

GX 4).* When addressing the Court, Cohen incorrectly stated that Monell's sentence was under the so-called "old" penal law. In response to the Judge's inquiry, he also stated that the Orange County District Attorney's Office did not have any statement to make in connection with the sentencing (Tr. 146-148; GX 4).

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* When it became known that Angelo Ingrassia was going to leave the District Attorney's Office, Jerome Cohen, Andrew Mauriello, and Abraham J. Weissman all actively sought the Republican party's endorsement for District Attorney. After some campaigning within the party, Cohen met with Doulin. Cohen told Doulin that he and Mauriello had agreed that if either one of them received the party's endorsement, the other would withdraw. Cohen further stated that since he, Cohen, was the Chief Assistant and had the most experience in the District Attorney's Office and Mauriello was the next most experienced person, it should be one of the two of them who received the endorsement. Cohen said that if the endorsement went to Abraham Weissman, who had only three years experience, there would be a primary fight for the office.

Doulin told Cohen that he, Doulin, had decided there would be no primary fight and that Cohen would be the party's candidate for District Attorney. But he cautioned Cohen that his support for Cohen as District Attorney did not assure Cohen that he would follow in the footsteps of prior District Attorneys and get Doulin's support for a judgeship. Cohen assured Doulin that he had no desire to be a judge and would be a one-term District Attorney (Tr. 129-133).

After this meeting and after his election, Cohen met with Weissman who was considering leaving the District Attorney's Office. Cohen told Weissman that since Mauriello was leaving the office, Weissman would be made Chief Assistant if he decided to stay. He also told Weissman that since he, Cohen, would be a one-term District Attorney and since Weissman wanted to be a judge, it would be to Weissman's advantage to remain in the District Attorney's Office as Chief Assistant and then possibly become District Attorney and then judge. Weissman agreed to stay and became Chief Assistant (Tr. 135-139). After a heart attack, Cohen was forced to resign during his first term, and Weissman became the District Attorney of Orange County (Tr. 134-135).

Prior to the sentencing, the Orange County Probation Department submitted a detailed pre-sentence report to Judge Isseks and verbally recommended that Monell be sent to jail (Tr. 222; GX 1C).* Defense Counsel Shapiro described that probation report as fair, full and complete and asked the Court to be lenient and to give Monell an opportunity to be a good citizen (GX 4).

Judge Isseks remarked that despite defense counsel's pleas, Monell already had received opportunities to prove himself and that but for mere luck Monell would be standing before him to be sentenced for murder. The Judge stated that he could find no reason for not sending Monell to prison and thereupon sentenced him to Sing Sing for an indefinite period, the maximum term not to exceed 2½ years (GX 4).**

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* The report stated, in part, that Monell *denied* shooting the victim despite the victim's own statements identifying Monell and corroborating testimony from Monell's girlfriend Florence Hall. Monell was described in the report as a "psychopathic personality" who had been adjudicated a juvenile delinquent for stealing cars in 1952 and placed on probation from which he was discharged as unimproved in 1953; had been arrested many times for disorderly conduct and various assaults; had been convicted of assault in the second degree to cover a robbery of a hotel clerk in 1957 for which he was sentenced to 2½ to 5 years in prison; had been paroled in December, 1959, which he violated and was returned to prison in February, 1960; had been released from prison in November, 1962, and then arrested for robbery in the first degree in 1966. The report also stated that Monell had a long history of propensity to alcohol and an assaultive nature; was unable to conform his conduct to the norms of society; and had been discharged from the Marines with an undesirable discharge having been court martialed several times. The report concluded: "His attitude leaves the undersigned with the impression that he will continue to behave as he pleases regardless of the norms of society and regardless of legal implications" (GX 1C).

** The effect of this sentence was to require a minimum one year term of imprisonment and a maximum 2½ year term (Tr. 742).

Upon hearing this unexpected sentence, Monell immediately told Shapiro that "something is wrong" and then turned to Florence Hall and instructed here to contact Mrs. Grant (Tr. 309-310, 363-369). Monell was then taken away to the detention cells, and Florence Hall telephoned Mrs. Grant at her home (Tr. 369-370).

Mrs. Grant was unable to explain the jail sentence and asked Hall to see Monell to tell him that she would contact Doulin to find out what went wrong (Tr. 314, 371). Hall then visited Monell in jail, gave him the message and told him to be patient and wait until Doulin was contacted (Tr. 314, 370-372).

Over the next three weeks Mrs. Grant made numerous telephone calls in an effort to reach Doulin and to find out why Monell did not get the promised sentence of probation. She was told by Doulin's family that he was away on vacation in Florida and that he did not have a telephone, so that the family would have to wait for him to call (Tr. 374-375). Mrs. Grant delivered numerous messages to Florence Hall to relay to Monell in jail, the substance of which was to "sit tight", wait for Doulin, and everything would work out as Mrs. Grant had promised (Tr. 315, 376, 380).*

While Monell was incarcerated Mrs. Grant was making other telephone calls in addition to those to Doulin. She telephoned former District Attorney Ingrassia mistakenly believing he was still the District Attorney, and in irate tones and abusive language accused him of improperly sending her "good" grandson to jail (Tr. 54-59, 68-70). In a similar telephone call to Jerome Cohen she accused

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* Mrs. Grant did not communicate with Monell directly because she had an aversion to seeing her grandson in jail. She never visited him at any of the times he was in jail on this or any other charge (Tr. 625).

him of not living up to promises that had been made concerning her grandson's sentence (Tr. 192-193). Finally, she also called Norman Shapiro and angrily inquired of Shapiro what went wrong with the sentencing since, as she stated, the probation sentence was "bought and paid for." When questioned further by Shapiro, Mrs. Grant stated that "the undertaker" * had taken care of the probation sentence and the only reason things went wrong was because he was away in Florida (Tr. 743-745).**

Meanwhile, defense counsel, Norman Shapiro, who realized that the March 5th sentence should have been under the so-called "new" law, was attempting to have Monell resentenced. However, despite Shapiro's efforts to place Monell on the Court calendar on several different occasions, the District Attorney's Office refused to agree to the resentencing while Assistant District Attorney Abraham J. Weissman was on vacation, since he was now the Assistant-in-Charge of the Monell case (Tr. 741, 750-752, 793, 796).

Near the end of the third week of Monell's incarceration, Florence Hall was told by Mrs. Grant that Doulin was insisting on receiving over $1,400, which Doulin said he had to give to someone else in order to get the probation sentence for Richard Monell (Tr. 381).

Finally, on March 26, 1971, three weeks after the first sentence, Monell, represented by Norman Shapiro, again appeared before Judge Isseks. This time Abraham J.

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* By profession, Mr. Doulin was and is an undertaker in Newburgh.

** Shapiro made a contemporaneous note of this conversation with Mrs. Grant which was received in evidence on redirect examination of Shapiro. The note, in Shapiro's handwriting, stated in part that Mrs. Grant called and was "pissing and moaning because her political connection didn't come through" (Tr. 814; GX 2F).

Weissman represented the District Attorney's Office (Tr. 316, 752; GX 5). After setting aside the March 5, 1971 sentence, Judge Isseks heard from Norman Shapiro. Shapiro attempted to convince Judge Isseks that Monell should receive a sentence in County Court Jail rather than in State custody at Sing Sing (Tr. 755). Thereafter, the Judge asked Mr. Weissman for his comments. Weissman replied, in substance, that since the first sentence the District Attorney's Office had received a number of calls from responsible citizens asking that leniency be extended to Monell. Mr. Weissman then went on to state that it would be an injustice to incarcerate Monell. Finally, Weissman asked the Court to place Monell on probation.* Judge Isseks stated that, in view of the courageous stand taken by the District Attorney's Office, he would accept the recommendation and sentenced Monell to five years probation (GX 5).

About four days after the sentencing, Mrs. Grant asked Hall to accompany her and her husband on a trip to their bank in Newburgh. Mr. Grant drove them to the bank and parked outside. He went inside the bank and returned with an envelope which he gave to Mrs. Grant who placed it in her pocketbook. They all drove from the bank to a parking area outside Doulin's place of business, a funeral parlor in Newburgh (Tr. 381). Mrs. Grant left the car, went into the funeral parlor and returned in a few minutes. She sat down in the car and remarked that she had seen Doulin, that he looked well after his vacation, and that she had paid him the money

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* Weissman, who died prior to trial, admitted in the grand jury, after earlier denials before the same grand jury, that Doulin had contacted him by phone and recommended probation for Monell. Judge Ward did not permit the Government to introduce Weissman's grand jury testimony in its case-in-chief or during the rebuttal case even after Doulin had denied speaking to Weissman. See p. 18, *infra*.

for Richard. She repeated that this was the last of her money and that Richard had better stay out of trouble or he would end up in jail (Tr. 383-384).

Some weeks after this, Mrs. Grant while complaining to Richard Monell about his continued improper conduct, said that he had cost her $1,500 and that his bad conduct since his release from jail did not demonstrate the appropriate gratitude to the family "friend" (Tr. 553).

About two months after the March 26th resentencing, Norman Shapiro and Doulin had an unplanned meeting at the Orange County Court House. During that brief conversation which ensued Doulin remarked to Shapiro that he, Doulin, did not know what Shapiro had heard about Monell's case, but he wanted Shapiro to know that all he had done was "put in a good word, or done a favor . . . for the grandson of an old dear friend" (Tr. 756-757).

Mrs. Grant, called as a Government witness, testified that she was a long time and devoted friend of "Bill" Doulin whom she had known for over fifty years (Tr. 612-615). Throughout that time she frequently went to Doulin to discuss family problems ranging from union difficulties which her son-in-law John Monell had, to adoption proceedings relating to Richard Monell's children, to family funerals (Tr. 629-630). However, according to Mrs. Grant, never at anytime had she discussed with Doulin any problem that Richard Monell was having with law enforcement authorities nor did she ever ask Doulin to assist Richard Monell in any way (Tr. 631).

Mrs. Grant denied ever paying any money to Doulin in connection with arranging for the probation sentence (Tr. 629). She identified her savings bank passbook which reflected a withdrawal of $1,480 on March 30, 1971, leaving a balance of approximately $9.88 (GX 17).

She testified that she "can account for every penny" of the $1,480, but when asked to do so responded: "I can't remember anything" (Tr. 635-636). Later, she claimed that the cash was withdrawn from the savings account to give to John Monell so that he would have money available to purchase real property (Tr. 637-638). Mrs. Grant had no explanation as to why the money was not transferred from her account in the bank to John Monell's account in the same bank (Tr. 639-640). Mrs. Grant also claimed that she held the cash in her home for about four to eight weeks, but when confronted with her grand jury testimony in which she testified that she never kept this much money at home, she responded that she now did not remember (Tr. 638, 640, 642).

Mrs. Grant also denied telling federal and state investigators that she had obtained a probation sentence for Richard Monell by contacting a close friend who was a friend of Governor Rockefeller (Tr. 649).

Finally, Mrs. Grant denied making telephone calls to Weissman, Cohen, Ingrassia or Shapiro, except for the purpose of finding out when the sentence or resentence was scheduled to take place (Tr. 615, 618). She further denied ever telling her son-in-law John Monell that Doulin would help Richard in connection with the sentencing on the assault case (Tr. 650).

John Monell, also called as a Government witness, testified that Doulin was a friend of the family for as long as Monell could remember (Tr. 655-656). He testified that in 1971, when Richard Monell was in jail, Mrs. Grant told him that she was talking to Doulin to get his help with Richard Monell's case (Tr. 668-669). She further advised John Monell that Doulin was on vacation and that that was causing a problem (Tr. 675). In fact, according to John Monell, everytime Richard Monell was in jail or in trouble Mrs. Grant went to see Doulin to get

help (Tr. 678). Mrs. Grant told John Monell that Doulin said he would do anything he could to help Richard Monell (Tr. 695-696, 697).

John Monell testified that he received approximately $1,500 in cash from Mrs. Grant toward the purchase of certain property in 1971 (Tr. 679). He, too, had no explanation why the money was given in cash when it could have been transferred from Mrs. Grant's account directly to his account in the same bank. When he finally did purchase property in July of 1971, he stated that he paid for it in cash. But when pressed he stated that the cash was in the "form of a check" (Tr. 679). John Monell testified that on June 28, 1971, he deposited the cash which he had received from Mrs. Grant, and that this was shortly after he had received it. However, he also testified that he may have kept the cash in his house for some weeks. This latter testimony was in direct contradiction to his grand jury testimony in which he stated he never kept money in this amount around the house (Tr. 679, 680-683, 697-698).

Lt. Edward Whalen of the New York State Police interviewed Mrs. Grant on March 25, 1974, in the presence of an FBI agent and her husband. Before the interview could commence, Mrs. Grant stated that she knew the agents were there to question her about the payoff and how Monell got probation. She stated that she knew they were interested in finding out the identity of her friend who was a friend of the Governor who was interested in helping Richard get probation. Mrs. Grant stopped talking to the agents when Mr. Grant told her to keep quiet (Tr. 704-713).

Portions of Doulin's grand jury testimony, including those portions alleged to be false in the indictment, were read to the jury. In that testimony, Doulin had testified that the only way he knew Richard Monell was in con-

nection with the adoption problem pertaining to Richard Monell's children. He also testified that he had been a member of the New York State Athletic Commission and Republican Chairman of Orange County for ten years. Except for his first election ten years ago, he had run unopposed and been elected unanimously every two years thereafter.

The Defendant's Case

The defendant testified that he had been a Republican Committeeman in Orange County for over forty-five years having held the position of Newburgh Committee Chairman for eight years and having been a member of the Newburgh City Council for eleven years. For the past twelve years he had successfully run for Chairman of the Republican Party of Orange County (Tr. 1097-1105).

Each count of the indictment was read to Doulin and each time he responded that the answers given to the grand juries were truthful and accurate, and he did not wish to make any changes (Tr. 1106-1110).* He denied that anyone had ever even offered him any money or anything of value to bribe him or to get him to use his influence (Tr. 1110, 1165). Doulin testified that he had known Mrs. Grant for at least fifty years and had been a close friend (Tr. 1166). He further stated that each year he vacationed in Florida from about mid-February to about the first of April and stayed at a motel which does not have a telephone in each room (Tr. 1174-1175,

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* The only "change" he made was to state that when he had been asked about interceding for people in connection with traffic tickets, he had not thought of his one effort to assist Leon Greenberg, then President of Monticello Raceway. See p. 27, *infra*.

1177). He claimed that on March 30, 1971, he was in Florida or enroute to New York by automobile (Tr. 1179). He presented gasoline company credit card stubs which he claimed supported this contention.

Doulin denied that he had ever known that Abraham Weissman, the Assistant District Attorney who handled Monell's resentencing, was interested in becoming the Republican candidate for District Attorney when Angelo Ingrassia left that office (Tr. 1122). On cross-examination, Doulin was shown a copy of a 1971 letter (GX 38) written by Weissman and addressed to Doulin thanking Doulin for his courtesies in connection with Weissman's campaign to get the position vacated by Mr. Ingrassia. Doulin again denied that Weissman was even thought of as a candidate, but when shown this letter he said that he recognized it (Tr. 1208-1209, 1211). When asked further questions about the letter, Doulin denied that he recognized it (Tr. 1211). Doulin denied having any contact or communication with Weissman in March, 1971 pertaining to Richard Monell or anything else (Tr. 1230).

Finally, Doulin was asked about the testimony of one of his own character witnesses, Monsignor Markowski, in which the Monsignor testified that he had been present when people tried to buy Doulin by offering him things of value. Doulin was asked how that squared with his own grand jury and trial testimony that nothing had ever been offered to him. Doulin's only explanation was that perhaps Monsignor Markowski was referring to someone at sometime having offered Doulin "vegetables" (Tr. 1199).

In addition to Monsignor Markowski, the defendant also called six other character witnesses, including former Governor Malcolm Wilson (Tr. 1034, 1047, 1079, 1140, 1148, 1157).

The Government's Rebuttal Case

Frances G. DeFeo, secretary to the late Abraham J. Weissman, identified Government Exhibit 38 as a letter she typed for Mr. Weissman and which in the ordinary course of business was mailed to Doulin (Tr. 1238-1240).

The Defendant's Surrebuttal Case

Doulin was shown Government Exhibit 38—the Weissman letter—and testified that he had received many letters some of which he could not recall and further that Weissman was not a "candidate" for the position vacated by Angelo Ingrassia.

The Materiality Hearing

Bruno J. Beer testified that he was a member and for a time Deputy Foreman of the August 22, 1972, Strike Force Organized Crime Grand Jury in the Southern District of New York (Tr. 907-908). He stated that this Grand Jury, before which Doulin had testified, was investigating allegations of illegal gambling and corruption of both public officials and law enforcement officers in connection with providing "protection" for the illegal operations (Tr. 909-910).

There was testimony before the Grand Jury that gambling operations operated and run by professional gamblers set aside about $1,000 a week for "expenses" and that out of the $1,000 approximately two-thirds was paid to Doulin for protection and one-third to public officials, including a police officer named William Lee (Tr. 911-912, 918-919; Ct. Ex. 8).

Mr. Beer testified that the Grand Jury heard testimony that people in Orange County went to Doulin for

favors, including his overlooking illegal gambling and bribery in Newburgh (Tr. 914). Also, there was testimony from Newburgh's corrupt former Chief of Police that Newburgh gambler Quentin Skipwith said he had paid for Doulin's annual Florida vacations (Ct. Ex. 10).

According to Mr. Beer, the grand jury called Doulin as a witness to learn whether he had any knowledge of illegal gambling, or its protection, or bribes paid to public officials (Tr. 912). The grand jury returned a series of indictments naming about fifteen different people involved in gambling, obstruction of local law enforcement and perjury in connection with the Orange County investigation (Tr. 911, 958-959). Those indicted included *Alan Handler*, 73 Cr. 628 (18 U.S.C. § 1623), *William Lee*, 73 Cr. 56 (18 U.S.C. § 1623), *Quentin Skipwith*, 74 Cr. 820 (18 U.S.C. §§ 1511 and 1955), *Kay Thorpe*, 73 Cr. 631 (18 U.S.C. §§ 1511 and 1955) and *A. Politi et. al.*, 73 Cr. 56 (18 U.S.C. §§ 371 and 1955) (Tr. 911, 958-959).

Joseph Paul Ciccone testified that he was a member of the January 1975 Additional Grand Jury which was empanelled to concentrate on investigations into corruption of and by public officials and people who held positions of public trust. The grand jury investigated various federal crimes involving public officials including tax evasion and mail fraud (Tr. 923-926). In particular, the grand jury was investigating allegations of influence being used to affect the outcome in the Monell case and other cases in Orange County. The grand jury was attempting to determine whether any improper influence had been brought to bear by or on a public official to change Monell's sentence from jail to probation and in so doing whether any federal laws had been violated, including perjury before the Strike Force Grand Jury (Tr. 926- 927, 930, 942).

The testimony of William Doulin before the Strike Force Grand Jury was read to this Grand Jury (Tr. 945; Ct. Ex. 5 and 6). Also, the Grand Jury heard testimony, on several dates, from Abraham J. Weissman (Ct. Ex. 7). Mr. Weissman originally denied that he had ever been contacted by Doulin in connection with any pending criminal case and specifically denied being contacted in connection with Richard Monell's case. However, on Mr. Weissman's last appearance before the Grand Jury, he admitted that Doulin had in fact telephoned him, possibly interstate, in March, 1971, and asked him to recommend probation for Monell. The Grand Jury returned a perjury indictment against Weissman on the same day that it returned the Doulin indictment.*

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* Weissman died two months after the indictment was filed and before the Doulin trial. This sworn testimony against Mr. Weissman's penal interest was the subject of pretrial memoranda, as well as lengthy and continued discussions and oral argument. The Government offered the transcript of Weissman's testimony pursuant to Rule 804(b)(3) of the Federal Rules of Evidence. Judge Ward refused to admit the testimony in the Government's case-in-chief because of possible confrontation problems. Thereafter, following Doulin's trial testimony in which he denied having any conversations with Weissman concerning the Monell case, the Government re-offered the Weissman transcript in its rebuttal case. Although Judge Ward viewed the ruling as a close question, he refused to admit the Weissman testimony.

ARGUMENT

POINT I

The defendant's false testimony was material to the grand juries' investigations.

Doulin's principal claim is that his false testimony was not material as a matter of law because the testimony did not itself directly refer to conduct which is a federal crime. He claims further that the grand juries' investigations were "unauthorized." These contentions totally misconstrue the showing necessary to establish materiality in a perjury prosecution and simply ignore the facts of this case.

The grand juries before which Doulin appeared were conducting extensive investigations into illegal gambling, corruption and crimes committed by public officials. At least five indictments were returned by the Strike Force Grand Jury, charging conspiracy (18 U.S.C. § 371), conducting illegal gambling businesses (18 U.S.C. § 1955), making false statements under oath (18 U.S.C. § 1623), and obstruction of local law enforcement by bribing the former City of Newburgh Police Chief and other police officers (18 U.S.C. § 1511).*

In the course of the first grand jury inquiry, Doulin had been named as a "protector" of illegal gambling operations in the Newburgh area, allegedly receiving hundreds of dollars weekly from—and having his annual Florida vacation paid for by—professional gamblers.

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* Other related crimes which the grand juries were investigating included violations of the Travel Act (18 U.S.C. § 1952), extortion by a public official (18 U.S.C. § 1951), mail and wire fraud (18 U.S.C. §§ 1341 and 1343), and tax evasion (26 U.S.C. § 7201).

The thrust of the testimony in the grand jury suggested that Doulin, as a political leader, received these pay-offs to assert his influence with other public officials to protect gamblers from arrests and prosecution. Doulin was further identified as the person who fixed the Monell assault case in Orange County. Against this background, as Judge Ward properly found, it was reasonable to call Doulin as a witness, and it was material to the grand juries' inquiries to ask Doulin if he had fixed or influenced the outcome of the Monell assault case or any other case and, if he had done so, how this was accomplished.*

In the landmark case of *Carroll* v. *United States*, 16 F.2d 951, 953 (2d Cir.), *cert. denied*, 273 U.S. 763 (1927) this Court defined the test of materiality in a grand jury investigation as "whether the false testimony has a natural effect or tendency to influence, impede, or dissuade the grand jury from pursuing its investigation." See *United States* v. *Cohen*, 452 F.2d 881 (2d Cir. 1971); *United States* v. *Stone*, 429 F.2d 138 (2d Cir. 1969), and cases cited therein; *United States* v. *Collins*, 272 F.2d 650 (2d Cir. 1959). The liberal test of materiality established by *Carroll* and its progeny gives recognition to the important fact that a grand jury investigation is not complete "until every available clue is run down and all witnesses examined in every proper way to find if a crime has been committed." *United States* v. *Stone*, *supra*, 429 F.2d at 140, *quoted with ap-*

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* Doulin's suggestion that this investigation should have been referred to local authorities is at best naive. At the time, the chief investigating officer of Orange County—the District Attorney, Abraham J. Weissman was a target of the grand jury's inquiry and eventually was indicted. The District Attorney's superior, the Governor, appeared as a character witness for Doulin.

proval in Branzburg v. *Hayes*, 408 U.S. 665, 701 (1972).*

Contrary to defendant's claim, it is clear that to be material the perjurious testimony need *not* be relevant in an essential sense to the ultimate issues pending before the Grand Jury. *Carroll* v. *United States*, *supra*; *United States* v. *Collins*, *supra*; *United States* v. *Stone*, *supra*. Thus, for example, false testimony as to matters relating to events barred by the statute of limitations is still perjury because the "[t]he Grand Jury's scope of inquiry . . . is not *limited to events which themselves may result in criminal prosecution*, but is, properly concerned with any evidence which may afford valuable leads for investigation of suspected criminal activity during the limitations period." *United States* v. *Cohen*, *supra*, 452 F.2d at 883 (emphasis added).** Moreover, materiality

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* Cases construing 18 U.S.C. § 1621 are applicable to 18 U.S.C. § 1623. *United States* v. *Mancuso*, 485 F.2d 275, 280 n.15 (2d Cir. 1973).

** Defendant's reliance on the materiality test enunciated in *United States* v. *Freedman*, 445 F.2d 1220, 1226-27 (2d Cir. 1971), is misplaced. It is true that *Freedman* sets a slightly different and stricter test for materiality, that is, "it must be shown that truthful answer would have been of sufficient probative importance to the inquiry so that, as a minimum, further fruitful investigation would have occurred." However, in *United States* v. *Mancuso*, 485 F.2d 275 (2d Cir. 1973), this Court recognized that the perjury in *Freedman* occurred not before a grand jury, but in an SEC proceeding, where factual issues are more precisely defined and rigidly predetermined than in a grand jury. The Court plainly noted that a test different from *Freedman* has been applied to perjury before a grand jury.

Although *Mancuso* did not conclusively decide whether the *Freedman* test should apply to grand juries this Court apparently did resolve that question in *United States* v. *Gugliaro*, 501 F.2d 68 (2d Cir. 1974), where the Court did not apply the narrow or somewhat more restrictive *Freedman* test to perjury committed by a defendant at a prior criminal trial. Thus, *a fortiori*, the

[Footnote continued on following page]

must be determined as of the time of the grand jury investigation, since materiality is a matter of the relationship between the specific interrogation and the grand jury's objectives. Any claim *now*, with the questionable benefit of hindsight, that truthful answers would not have furthered the investigation is of no avail. *United States* v. *Stone*, *supra*, 429 F.2d at 140-141; *United States* v. *McFarland*, 371 F.2d 701 (2d Cir. 1966), *cert. denied*, 387 U.S. 906 (1967); *United States* v. *Goldstein*, 168 F.2d 666 (2d Cir. 1948).

Here, it is beyond question that Doulin was an essential witness in this grand jury investigations. If Doulin had the ability to affect the outcome of a criminal case it was important to know where in the criminal process he had brought his influence to bear. The possibility was real that, through his political influence, Doulin might control police, and or prosecutors and or judges. Given the information previously received by the grand jury, and the general objectives of its inquiry, manifestly it was proper and logical for the grand jury to consider and pursue the Monell matter. For Doulin's successful intervention in Monell's case would demonstrate that he had the means and probably the inclination to interfere in other cases. Moreover, Doulin's ability to "reach" even one person in the criminal justice system raised the prospect that perhaps others had reached the same person. Moreover, if Doulin had corruptly influenced one or more persons it was pertinent to the grand jury's investigation to learn the nature of his control. The grand juries had a duty to find out whether money was paid to Doulin or if he had been a conduit for bribes and, if so,

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Freedman test would not apply to a grand jury proceeding which is, of course, investigative rather than adjudicative.

Regardless of the test to be applied, as the trial Court found and as we demonstrate below, the facts here satisfy either standard of materiality to the grand juries' investigations.

to identify the source of the funds, their path and ultimate recipients. If Doulin fixed one case for $1,500 it gave credence and corroboration to other testimony that Doulin was protecting illegal gambling operations in Orange County for much larger sums. And, if Doulin had lied before the first grand jury, the very nature of the investigation suggested the possibility that he may have been encouraged by others to do so.

Thus, it was reasonably believed by the grand juries that Doulin's answers might well have provided the "evidentiary stone[s] in the larger edifice", *United States* v. *Mancuso*, *supra*, 485 F.2d at 283, including violations relating to tax evasion, Travel Act, extortion, gambling, obstruction of local justice, obstruction of justice and perjury. Instead, Doulin's flat denials stymied and frustrated the orderly investigative process by injecting confusion and contradictory testimony into the investigation.

Defendant's reliance on *United States* v. *Mancuso*, 485 F.2d 275 (2d Cir. 1973), is indeed strange, since the only apparent value of *Mancuso* is in the support it provides for the Government's position. There, Mancuso contended that the Government had to prove that the bribe attempt, which was a subject of the perjury indictment, was a "federal" bribe, and that the grand jury had to be capable of returning a federal bribery indictment—precisely the claim asserted by Doulin. This Court, in rejecting that claim, stated: "Neither the failure of the grand jury to return an indictment concerning the alleged bribery attempt, *nor the absence of proof that federal jurisdiction over it would have existed, is relevant to the issue of materiality.*" *United States* v. *Mancuso*, *supra*, 485 F.2d at 283 (emphasis added).

The Ninth Circuit's decision in *United States* v. *Lococo*, 450 F.2d 1196 (1971), *cert. denied*, 406 U.S. 945 (1972), is to the same effect. The defendant there falsely

testified that he had not spoken to a man named Mirr for at least one year. Lococo was implicated in bookmaking and Mirr had at one time been involved in interstate gambling. Lococo contended that his testimony was not material because the grand jury was investigating horse-race fixing and wagering in California, and the Government did not offer testimony connecting the calls from defendant's telephone to Mirr's telephone with the subject matter of fixed horse races and wagering. Relying on cases from this Circuit and others, the Ninth Circuit held that the Government did not have to prove such a connection to establish materiality, since Lococo's false statements "might have supplied a link between Mirr and Lococo" and "curbed the flow of information to the grand jury." This is so even though the false testimony was relevant only to a subsidiary issue and not directed at the primary subject of the grand jury's inquiry. *United States* v. *Lococo*, *supra*, 450 F.2d at 1198-1199. See also *United States* v. *Alu*, 246 F.2d 29 (2d Cir. 1957); *United States* v. *Lee*, 509 F.2d 645 (2d Cir. 1975) (Newburgh policeman indicted by this Strike Force Grand Jury for denying contacts with or knowing gamblers).

No legitimate policy would be served by carving a narrow test of materiality—as Doulin urges on this Court. Indeed, the novel and restrictive test of materiality which Doulin proposes would subvert the grand jury as an effective investigative tool. The grand jury's duty has long been recognized as including the thorough exploration of all leads and clues. *Carroll* v. *United States*, *supra*, 16 F.2d at 953. The limitations which Doulin proposes on perjury prosecutions will benefit only those, like himself, who do not hesitate to lie under oath about matters which would put the grand jury on the track to uncovering serious wrongdoing by others. In his desperate attempt to overturn his well-warranted conviction, Doulin has advanced a position which if accepted would, in many cases, remove the only sanction which gives meaning to the oath for men like Doulin.

POINT II

Defendant's other claims are all without merit.

A. The trial Court properly ruled on materiality as a question of law.

Defendant concedes that in arguing for a jury determination of materiality he is asking this Court to overrule the Supreme's Court's decision in *Sinclair* v. *United States*, 279 U.S. 263 (1929) and *all* the cases in this Circuit under 18 U.S.C. §§ 1621 and 1623. Defendant cites no federal case holding that materiality is a jury question or should be one.* Patently, this claim should be rejected.

B. Hearsay testimony was properly admitted.

The Government contended—and the trial Court so found—that a conspiracy or joint venture existed among Doulin, Richard Monell, his parents, grandparents, and girlfriend to get Monell out of, and to keep him out of, jail. Statements in furtherance of the joint venture were admissible against Doulin, *United States* v. *Ruggiero*, 472 F.2d 599 (2d Cir.), *cert. denied*, 412 U.S. 939 (1973) (statements in furtherance of state bribery admissible in perjury trial); *United States* v. *Marchisio*, 344 F.2d 653 (2d Cir. 1965), Fed. R. of Evid. 801(d)(2)(E), once the Government established his participation in the venture through independent non-hearsay evidence. *United States* v. *Geaney*, 417 F.2d 1116 (2d Cir. 1969), *cert. denied*, 397 U.S. 1028 (1970).

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* Interestingly, the Supreme Court in *Sinclair* relied, in part, on the Second Circuit's decision in *Carroll* v. *United States*, *supra*. The Court also stated that it would be "incongruous and contrary to well-established principles to leave" materiality to the jury. *Sinclair* v. *United States*, *supra*, 279 U.S. at 299.

The proof of Doulin's participation, as Judge Ward found (App. 1464) was conclusive: Doulin's own admission to Norman Shapiro that he had assisted in getting probation for Richard Monell by putting in a good word for Monell as a favor to Mrs. Grant. This admission was further buttressed by Doulin's presence outside the Family Court Jail, at a time when Mrs. Grant said she would call "Bill" to get Richard Monell home for Christmas, and Doulin's own statement to Florence Hall that she must be the girlfriend of the "bad boy."

Moreover, the independent evidence of Mrs. Grant's participation in the conspiracy was equally persuasive. Mrs. Grant was a close friend of William Doulin; she had messages communicated to Monell in jail; she had a meeting with Doulin when Monell was in Family Court jail; she went to the bank to get cash from her bank account and went directly to Doulin's place of business to deliver the money. While these actions, standing alone, were more than sufficient to satisfy *Geaney*, there were also Mrs. Grant's admission of her involvement in a scheme to keep her grandson out of jail, which were made to Florence Hall, Norman Shapiro, Jerome Cohen, Richard Monell, and John Monell.*

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* The assertion that Doulin was deprived of his right to confront witnesses because Mrs. Grant *denied* the statements which the Government claimed she made in furtherance of the joint venture is simply absurd. Had it been prearranged, Doulin could not have planned Mrs. Grant's denials better. Moreover, even if Mrs. Grant had asserted her Fifth Amendment privilege not to testify, Doulin would be without grounds to complain. *Cf. Dutton* v. *Evans*, 400 U.S. 74 (1970). Mrs. Grant's denials squarely placed before the jury conflicting versions of the facts—one inculpatory and one exculpatory. The jury's verdict resolved the conflict.

C. The indictment is not multiplicitous.

Defendant's claim, raised below and rejected by Judge Ward, that the indictment is multiplicitous must fall as a matter of law since each count on which the jury convicted depended upon proof of different facts. *United States* v. *Blockburger*, 284 U.S. 299 (1932); *Gore* v. *United States*, 357 U.S. 386 (1958).

The perjurious testimony in Count Two was established by the fact that Doulin aproached Weissman about the Monell sentence, as well as by Doublin's efforts to get Monell out of jail during his problems with the Family Court in 1970.* The perjurious testimony in Count Five was established by Doulin's successful *action* in influencing Weissman to recommend and secure probation for Monell in the assault case. The perjurious testimony in Count Six was established by Doulin's *conversations* with Mrs. Grant about helping Richard Monell in the assault case. The perjurious testimony in Count Seven—unlike Count Five'**—was established by Doulin's conversation with Weissman and his subsequent conversation with Norman Shapiro in which he admitted helping Monell in his assault case.***

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* Count Two was also supported by testimony that despite Doulin's vociferous protestations to the contrary, he had interceded on behalf of someone with respect to a traffic ticket. This intercession was accomplished when he asked Judge Ingrassia to contact a local Magistrate and arrange for an adjournment for Leon Greenberg (Tr. 1128-1129).

** Count Five referred to actually "interceding" in the criminal justice system, whereas Count Seven referred to "discussions" about the Monell case.

*** Even if the Court were to find any of the counts multiplicitous, a remand for resentencing and not dismissal would be the appropriate remedy. *United States* v. *Mancuso*, *supra*, 485 F.2d at 283. In this case, however, such a remand is unnecessary. In sentencing the defendant to concurrent terms on all counts,

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Thus, while the indictment as a whole referred to, *inter alia*, the Monell assault case, the questions in different counts dealt with particular facts of Doulin's involvement with different people. Judge Ward, after careful consideration, rejected Doulin's contentions here, which were extensively briefed and argued before, during and after trial. (See, *e.g.*, App. 53a, 1493; Tr. 1033). Each of the counts in the indictment, accordingly, charged a separate crime of perjury, as was amply demonstrated by the jury's acquittal of Doulin on three counts.

D. The questions asked in the grand juries were proper.

Defendant's scatter gun attack on the questions posed in the Grand Jury is frivolous. The transparency of this last ditch effort is made apparent by defendant's failure to analyze the grand jury questions, or even discuss them, within the framework of the cases he cites. The words used and the questions asked in the grand juries were clear and proper. See *United States* v. *Bonacorsa*, 528 F.2d 1218 (2d Cir. 1976); *United States* v. *Marchisio*, 344 F.2d 653, 661-62 (2d Cir. 1965); *United States* v.

Judge Ward made clear that the primary reason for the sentence was the lies in the Grand Jury compounded by repeating the lies under oath to the trial jury (App. 1509-10). Judge Ward was focusing on the entire events and not the individuals lies: *"It would appear that he did, in fact, speak to the late Abraham Weissman,* and while speaking to Mr. Weissman does not, in this Court's view in any way, represent a crime in and of itself—*I suggest for sentence—the fact that the matter was covered up by a lie* has resulted in his being here today and brings him I know great pain and even more, I am certain it brings pain to his family" (App. 1511) (emphasis added). It is thus clear that the Court below did not increase the severity of the sentence by the number of counts on which the defendant was convicted and that had Doulin been convicted on a single count, the sentence would have been the same. *Cf. Counts* v. *United States*, 527 F.2d 542, 544 (2d Cir. 1975).

Chapin, 515 F.2d 1274 (D.C. Cir. 1975). Moreover, at trial Doulin testified that he understood the questions and indeed reiterated his false answers. Finally, these very claims were considered and rejected by Judge Ward after the submission of voluminous memoranda by the defendant. (See, *e.g.*, App. 1446-1447, 1453, 1485, 1491).*

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* Defendant's claim that the Court should have instructed the jury to read the questions and answers as a whole to interpret properly the indictment is frivolous. No such charge was requested prior to the Court's initial instructions to the jury, nor was exception taken to the absence of such a charge. Fed. R. Crim. P. 30. Moreover, there was no occasion to deliver such a charge during the jury's deliberations. Defendant now points to the jury's alleged confusion over the wording of Count Two (Ct. Ex. 18) as having required a clarifying instruction. However, at the time this note was received counsel agreed with the Court's suggestion that the jury formulate a specific question about Count Two (Tr. 1388), which the jury did on the very next morning. And, the jury's next note (Court Ex. 19) clearly presented an intelligent and specific question which the Court answered properly. Certainly, this note did not require the Court to instruct the jury further on Count Two. Indeed, any instructions other than those given might well have served to confuse the jury. (See Tr. at 1392-96).

Also, there was no error in the admission of testimony about Doulin's powerful role in Orange County Republican politics. Such evidence plainly was relevant to Weissman's motive for his actions in the Monell case. Indeed, in view of the prominent figures called as character witnesses and Doulin's own testimony describing his significant and powerful role in Orange County, this claimed error is frivolous. (See, *e.g.*, Tr. 1121).

Finally, Doulin attempts to implicitly raise certain claims which were explicitly rejected by Judge Ward. Doulin was carefully and fully advised of his rights in each grand jury and his status as a subject of the juries' investigations. Doulin was treated reasonably and not improperly deceived, victimized or "set-up". (See, *e.g.*, Tr. 1027, 1033). Indeed, the Government's efforts to be fair were demonstrated throughout the grand jury presentation and the trial. For example, the Corruption Grand Jury, together with the stenographer, Deputy Marshals and an Assistant United States Attorney, all traveled to Kingston, New York, so that the ailing Mrs. Grant could testify and exculpate Doulin.

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

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MARGARITA C. COONEY being duly sworn deposes and says that she is employed in the office of the United States Attorney for the Southern District of New York.

Stating also that on the 6th day of May, 1976 she served 2 copies of the within briefs - United States v. William E. Doulin, 76-1070 by placing the same in a properly postpaid franked envelope addressed:

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And deponent further says that she sealed the said envelope and placed the same in the mailbox for mailing at the United States Courthouse Annex, One St. Andrew's Plaza, Foley Square, Borough of Manhattan, City of New York.

Margarita C. Cooney
MARGARITA C. COONEY

Sworn to before me this

6th day of May, 1976

Gloria Calabrese

GLORIA CALABRESE
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No. 24-0535340
Qualified in Kings County
Commission Expires March 30, 1977